

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1207 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

AJAY @ MUNNA NAINSINH WAGHRI

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner
MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 05/04/2000

ORAL JUDGEMENT

#. Commissioner of Police, Ahmedabad City, Ahmedabad, passed an order on August 9, 1999 in exercise of powers under section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short),. detaining Ajay @ Munnu Nainsinh Waghri (Salat) of Waghri

Vas, Odhav Gam under the PASA Act. The detaining authority took into consideration 4 offences registered against the detainee in respect of which the investigation was pending when the order was passed. They are as under.

-
1. Vadali Police Station IPC 457, 380
46/99, 24.6.99
 2. Himmatnagar Police Stn. IPC 379
25/99, dtd. 22.1.99
 3. Odhav Police Station IPC 379, 461
Ahmedabad City,
227/99, dtd. 30.6.99
 4. Odhav 247/99 dtd. IPC 454, 457, 380
16.7.99
-

The detaining authority also took into consideration statements of two anonymous witnesses recorded by the proposing authority in respect of the incidents that occurred on 1st July, 1999 and 26th June, 1999.

#. After considering the above aspects, the detaining authority came to conclusion that the detainee is a "dangerous person" as defined under the PASA Act. The detaining authority also recorded satisfaction that the witnesses whose statements have been recorded by the proposing authority suffer from genuine fear in respect of their person and property qua the detainee and therefore, were not ready to depose against the detainee in public. That they gave statements only on assurance of anonymity and their anonymity is required to be maintained in public interest. The detaining authority, therefore, exercised powers under section 9(2) of the PASA Act and exercised privilege of not disclosing the identity of the two witnesses.

2.1 The detaining authority considered the possibility of resorting to less drastic remedies but came to a conclusion that the petitioner is required to be detained under the PASA Act as he is required to be immediately prevented from pursuing his activities which are detrimental to public order.

#. The detainee challenges the order of detention on various grounds. The main grounds are that the satisfaction recorded by the detaining authority for immediately detaining the petitioner for immediately preventing him from pursuing his activities cannot be said to be genuine because the detainee was in custody when the order was passed and he could not have pursued the activities which he is alleged to have involved in. It is contended that the subjective satisfaction recorded by the detaining authority for the exercise of powers under section 9(2) of the PASA Act cannot be said to be genuine and proper and the required exercise is not undertaken by the detaining authority while exercising powers under section 9(2) of the PASA Act. For this purpose, reliance is placed on the fact that the statements of witnesses were recorded on August 3, 1999 and August 6, 1999. These statements were verified on August 9, 1999 and the order was passed on that very day. There was no time for the authority to undertake exercise of verifying the genuineness of the fear expressed by the witnesses so also the incidents narrated by them.

3.1 Another contention that is raised is that the satisfaction about the disturbance to public order is not genuine. The incidents for which the offences are registered relate to theft and as such, there is nothing to indicate the disturbance to public order. The statements of anonymous witnesses which indicate disturbance to public order cannot be accepted for the reason that the detaining authority has not properly verified the correctness of the incidents. It has therefore been sated that the subjective satisfaction about the disturbance to public order due to to activities of the detainee cannot be said genuine.

3.2 it is contended that the representation dated 4th February, 2000 was made to the detaining authority. Certain documents were demanded. The documents have been supplied on February 16, 2000. The documents are the statements of witnesses in connection with the registered offences. It is contended therefore, that there is delay in supply of these documents which ought to have been supplied along with the grounds of detention.

#. Mr. Thakkar, learned advocate appearing for the petitioner has relied upon the above grounds raised in the petition and submitted that the order of detention, therefore, may be quashed by allowing this petition. He produces on record the compilation of papers received along with the grounds of detention and statements in reply to his representation.

#. Mr. K.T. Dave, learned AGP, appearing for the respondents has vehemently opposed this petition. He submitted that the representation was received by the detaining authority on February 7, 2000 and it was replied to the detainee on February 8, 2000 i.e. on the very next day and the detainee was informed that the representation has been forwarded to the State Government as the order is already approved. Mr. Dave submitted that the documents have been supplied on February 16, 2000 by the detaining authority to the detainee. So far as the State Government is concerned, the representation was received on February 11, 2000 through the detaining authority. The said representation was decided and rejected on February 15, 2000. Mr. Dave submitted that February 12, 2000 and February 13, 2000 were holidays. He therefore, urged that there is no delay in deciding the representation.

5.1 So far as non-supply or delay in supply of the documents are concerned, Mr. Dave submitted that on demand being raised, the documents are promptly supplied. The documents were not supplied along with the grounds of detention as the detaining authority did not rely upon them nor did it refer to those documents in the grounds of detention and as such, there is no delay in supply of documents.

5.2 So far as the question of disturbance to public order is concerned, Mr. Dave submitted that four offences are registered and there are two statements of anonymous witnesses which indicate that the activity of the detainee were detrimental to public order. The order, therefore, may be sustained and the petition may be dismissed.

#. Having regard to the rival side contentions, it may be noted that the detaining authority has stated in the grounds, the incidents and the offences relied upon by him while arriving at a subjective satisfaction about the detainee being a dangerous person.

#. Four offences are registered against the detainee which have been taken into consideration by the detaining authority. The compilation supplied to the detainee along with the grounds of detention, when scanned, does not indicate any disturbance to public order, at least in respect of four registered offences. Even the statements of witnesses supplied to the detainee upon his representation do not indicate any disturbance to public order.

7.1 The only material that is available which can be stated to indicate disturbance to public order is the activities of the detainee in the form of statements of two anonymous witnesses. The detaining authority has exercised powers under section 9(2) and has not disclosed the identity of these two witnesses. In respect of these two statements, it may be noted that the statements were recorded on August 3, 1999 and August 6, 1999. They were verified on August 9, 1999 and the order was passed by the detaining authority on August 9, 1999. The detaining authority has exercised powers under section 9(2) of the PASA Act by verifying the statements on 9.8.99. There was no sufficient time lag to possible the undertaking of exercise of verifying the correctness and genuineness of the incidents and fear expressed by these witnesses and the need for exercise of powers under section 9(2) in public interest. In the case of Bai Amina, w/o. Ibrahim Abdul Rahim Alla v. State of Gujarat, reported in 1981 22 GLR 1986, it has been held that while exercising powers under section 9(2), the detaining authority has to consider antecedents, temperament, background of the detainee etc. and is expected to make contemporaneous record in this regard. There appears not any contemporaneous material to indicate the undertaking of this exercise by the detaining authority. In fact, there was no time for the detaining authority to undertake the exercise. In this regard, the decision in the case of Kalidas Chandubhai Kahar v. State of Gujarat & others, reported in 1993 (2) GLR 1659 will have to be taken into consideration. The exercise of powers under section 9(2), therefore, stands vitiated and affects the right of the detainee of making an effective representation under Article 22 (5) of the Constitution of India.

#. In view of the above discussion, the satisfaction recorded by the detaining authority that the activities of the detainee are detrimental to public order cannot be accepted as genuine or well founded. The exercise of powers under section 9(2) of the PASA Act can be said to be improper. The resultant effect is that the order of detention cannot be sustained. The petition deserves to be allowed on for the above reasons.

#. The petition is allowed. The impugned order of detention dated 9th August, 1999 is hereby quashed and set aside. The detainee - Ajay @ Munno Nainsing Waghri (Salat) is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

pirzada/-